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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON,  
9 TACOMA DIVISION

10 DAVID VIERS, VICKI MARCH, individually  
11 and on behalf of all others similarly situated,  
12 THE WASHINGTON STATE  
13 COMMUNICATION ACCESS PROJECT, a  
14 Washington Corporation, the OREGON  
COMMUNICATION ACCESS PROJECT, an  
Oregon Corporation, and the ASSOCIATION  
OF LATE DEAFENED ADULTS, an Illinois  
Corporation,

15 Plaintiffs,

16 v.

17 CINETOPIA, LLC, a Washington Limited  
18 Liability Company,

19 Defendant.  
20

NO. \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF UNDER THE AMERICANS  
WITH DISABILITIES ACT**

21 **I. INTRODUCTION**

22 Federal regulations implementing the Americans with Disabilities Act (ADA) require  
23 virtually all movie theaters to accommodate deaf and hard of hearing patrons by offering  
24 captions. Dialogue and other aural information are put into written form and displayed visually.  
25 The studios arrange the captions for almost all movies. The theaters must provide the means to  
26 display the captions. Because not every movie is distributed with captions, the regulations  
27

1 require all covered theaters to indicate in all of their advertising that captioning is available, and  
2 for which movie.

3 Cinetopia is a movie-theater group headquartered in Vancouver, Washington. It  
4 operates what it calls state-of-the-art multiplexes at four locations – two in Vancouver, one in  
5 Beaverton, Oregon, and one in Overland Park, Kansas. It does not provide captioning at any of  
6 those locations, nor does its website indicate that any captioning is available.

7 Plaintiffs are two individuals with significant hearing loss who need captioning to fully  
8 enjoy a movie, and three non-profit advocacy organizations to which they belong. Plaintiffs  
9 have made no fewer than seven pre-litigation efforts to contact Cinetopia to point out the  
10 violations and request that those matters be corrected. Cinetopia has to date not responded.

11 Based on the foregoing, plaintiffs request declaratory and injunctive relief requiring  
12 Cinetopia to comply with the pertinent regulations and make its services accessible to the  
13 individual plaintiffs, to members of the organizational plaintiffs, and to other similarly situated  
14 individuals. To that end, the complaint seeks certification of a class of individuals who need  
15 captioning to fully enjoy a movie. The complaint also seeks litigation expenses, including  
16 attorneys' fees, as provided by the Americans with Disabilities Act.

## 17 18 **II. JURISDICTION AND VENUE**

19 1. This Court has jurisdiction in this matter pursuant to 28 U.S.C. § 1331 because  
20 the claims are being made pursuant to a federal statute, the Americans with Disabilities Act  
21 (ADA), specifically under the provisions in Title III of that Act dealing with auxiliary aids and  
22 services, 42 U.S.C. § 12812(b)(2)(A)(iii), and the federal regulations specifically applying that  
23 provision to digital movie theaters, found at 28 C.F.R. § 36.303(g).

24 2. This Court has personal jurisdiction over the defendant because the defendant is  
25 domiciled in Vancouver, Washington.

1           3.       Venue is proper in this district and division because defendant is domiciled in  
2 this district and division, and because some of the acts and omissions at issue in this litigation  
3 occurred here.

4                                   **III.    THE PARTIES**

5           4.       Plaintiff David Viers is a resident of Vancouver, Washington. He wears two  
6 cochlear implants, prosthetic devices that stimulate the auditory nerve and provide a sensation  
7 of hearing. When he removes the external processors, he is totally deaf. He regularly attends  
8 movies, and would attend movies at one or both of the Cinetopia multiplexes in Vancouver if  
9 Cinetopia offered captioning.

10          5.       Plaintiff Vicki March is a resident of Tigard, Oregon. She has a significant  
11 hearing loss and even with hearing aids needs captioning to fully enjoy a movie. She lives near  
12 Cinetopia's Beaverton multiplex, but, when she went to that location, she learned that  
13 Cinetopia did not offer captioning. Should it do so she will attend movies at that multiplex in  
14 the future.

15          6.       Organizational plaintiff Washington State Communication Access Project  
16 (Wash-CAP) is a non-profit Washington membership corporation comprised principally of  
17 people with significant hearing loss. Its mission is to expand access to public life for such  
18 people through education, persuasion, and, where necessary, litigation. Its president is Dean  
19 Olson of Edmonds, Washington. Plaintiff Viers is a member of Wash-CAP.

20          7.       Organizational plaintiff Oregon Communication Access Project (OR-CAP) is a  
21 sister organization to Wash-CAP, a non-profit Oregon membership corporation with  
22 membership and mission like that of Wash-CAP. Its president is Clark Anderson of Eugene,  
23 Oregon. Plaintiffs March and Viers are both members of OR-CAP.

24          8.       Organizational Plaintiff Association of Late Deafened Adults (ALDA) is a  
25 nationwide non-profit organization incorporated in Illinois. Part of its mission is advocating for  
26 the interests of its members and people similarly situated. Plaintiff March is a member of  
27 ALDA.

1           9. Defendant Cinetopia, LLC is a Washington State limited liability company  
2 headquartered in Vancouver, Washington. Its Chief Executive Officer and registered agent is  
3 Rudyard Coltman, whose last known home address is in Portland, Oregon.

#### 4                                   **IV. OPERATIVE FACTS**

5           11. Many movie theaters make their movies accessible to people with hearing losses  
6 through captioning. The spoken dialogue and other aural information, like “gunshot” or  
7 “spooky music,” is put into visual form then displayed on individual viewing devices in sync  
8 with the pace of the movie. This display method is referred to as “closed captioning” because  
9 the captions are visible only to patrons who request viewing devices, as opposed to “open  
10 captioning,” in which the captions are superimposed on the screen and are therefore visible to  
11 everyone in the auditorium.

12           12. The movie captions are prepared in advance for the great majority of movies by  
13 entities that contract with the studios, and are furnished at no charge to the theaters as part of  
14 the digital data package that has replaced traditional film at the overwhelming majority of  
15 American theaters, including all theaters owned and operated by defendant Cinetopia. The  
16 captions are transmitted wirelessly to the individual viewing mechanisms, which the theaters  
17 provide.

18           13. Two different types of display devices are in common use. One is glasses,  
19 manufactured by Sony which display the captions on the lens. Another type of device, often  
20 called CaptiView, is manufactured by Dolby and shows the captions on small shielded viewing  
21 screens roughly the size of a cell phone that are affixed to a flexible gooseneck with a heavy  
22 base that fits into the cup-holder, and can be adjusted to place the captions in the same line of  
23 sight as the movie screen.

24           14. In December of 2016, after a multi-year notice-and-comment process, the  
25 federal Department of Justice, which has the authority to adopt regulations implementing the  
26 Americans with Disabilities Act, finalized a regulation, codified at 28 C.F.R. § 36.303(g),  
27 specifying what movie theaters must do to fulfill their statutory ADA obligations to people with

1 hearing loss when they show movies distributed with captions. The regulation requires theaters  
2 that have converted to digital projection to either offer closed captioning for every movie with  
3 captions, or to offer open captioning either for every showing of every movie, or whenever a  
4 request is made prior to the start of the movie.

5 15. All of Cinetopia's multiplexes use digital projection, and the overwhelming  
6 majority of movies that Cinetopia shows were distributed with captions.

7 16. Because a few movies are not distributed with captions, the regulations further  
8 require movie theaters to specify, on a movie-by-movie basis, those movies for which  
9 captioning is available. That notification must be shown in all advertising, including websites  
10 and recorded telephone messages, and must be displayed at the box office. Cinetopia's website  
11 contains no statement or suggestion that captioning is available for any movie.

12 17. Plaintiff Viers regularly attends movies in Vancouver and nearby communities.  
13 But because the Cinetopia multiplexes in Vancouver do not indicate that captioning is  
14 available, he is deterred from patronizing those theaters, which are convenient to his home.

15 18. After the Cinetopia multiplex in Beaverton, Oregon opened plaintiff March went  
16 to the theater and asked if it offered closed-caption viewing devices. She was told the theater  
17 did not do so. In December of 2018, after becoming aware that the captioning regulations were  
18 in effect, Plaintiff March sent a letter to the Cinetopia multiplex in Beaverton again asking if it  
19 had captioning equipment. She received no response. With no assurance that captioning is  
20 available, Plaintiff March is deterred from patronizing the Cinetopia multiplex in Beaverton,  
21 which is near her home.

22 19. ALDA is holding its 2019 international conference in Overton Park, Kansas. At  
23 past ALDA conferences, attending an accessible movie has been part of the scheduled or  
24 spontaneous activities. Due to the special features offered by Cinetopia, it is likely that some  
25 members would patronize the Cinetopia multiplex in Overton Park if the movies were  
26 captioned and accessible.

20. Following the failure of Cinetopia to respond to Plaintiff March's letter of December 1st, counsel sent a registered letter on January 4, 2019 to Rudyard Coltman, Cinetopia's CEO and registered agent, at the Vancouver address listed in the Washington Secretary of State's records as Cinetopia's address of record. That letter asked for a reply by Jan. 21. There was no response, nor was the "green card" acknowledging receipt returned.

21. Concerned that the January 4th letter may have been lost in the mail, identical letters were again sent certified, return-receipt requested, to both the Cinetopia corporate headquarters in Beaverton and to the address of record listed in the Washington state records on February 28th, again pointing out the non-compliance and asking for a reply by March 20th. Although the Post Office tracking system indicates that the letter to the Beaverton office was delivered, no "green card" was returned for either letter, and again, there was no response.

22. In a final attempt to open a dialogue prior to taking legal action, letters were sent on April 5th to the Beaverton and Vancouver corporate locations, and to Mr. Coltman's last-listed home address in Portland, Oregon. Printed on the outside of each envelope, in capital letters, was the statement, "final pre-litigation notice, do not ignore." The letter asked for a response by the close of business on April 22nd. No response has been received.

### III. CAUSE OF ACTION

#### **Violation of the Americans with Disabilities Act (ADA).**

23. Plaintiffs incorporate by reference each and every allegation contained in the foregoing paragraphs as if fully set forth.

24. Individual plaintiffs are both persons with a disability as defined in the ADA. Their deafness interferes with the major life activity of hearing, 42 U.S.C. § 12102(2)(A). Their status as people with disabilities entitled to the protections of the ADA must be measured without regards to the ameliorative effects of hearing aids or cochlear implants, 42 U.S.C. § 12102(4)(e)(i)(I).

25. Most members of the organizational plaintiffs are also persons with hearing disabilities within the meaning of the ADA, or are the spouses or companions of such people.

1 Because the interests of one or more of each organization's members are adversely affected by  
2 Cinetopia's failure to adhere to the requirements of the ADA and the implementing regulations,  
3 and because advocacy of this nature is part of the mission of each organization, the  
4 organizations have standing to bring this action in their own names.

5 26. Cinetopia's movie theaters are "places of public accommodation" under the  
6 Title III of the ADA, 42 U.S.C. § 12181(7)(C) (definitions).

7 27. Prohibited discrimination by a place of public accommodation under the ADA  
8 includes "a failure to take such steps as may be necessary to ensure that no individual with a  
9 disability is excluded, denied services, segregated or otherwise treated differently than other  
10 individuals because of the absence of auxiliary aids and services." 42 U.S.C. §  
11 12182(b)(2)(A)(iii).

12 28. The ADA defines "auxiliary aids and services" as "qualified interpreters or other  
13 effective methods of making aurally delivered materials available to individuals with hearing  
14 impairments," 42 U.S.C. § 12103(1)(A). Implementing regulations specify that open and closed  
15 captioning are auxiliary aids and services within the meaning of the ADA. 28 C.F.R. §  
16 36.303(b)(1).

17 29. To provide movie theaters with more precise guidance on exactly how the  
18 statutory "effective communication mandate" applies to the specific situation of digital movies  
19 distributed with captions, the Department of Justice undertook a multi-year notice-and-  
20 comment process that culminated in 2016 with the final adoption of regulations that are  
21 codified at 28 C.F.R. § 36.303(g). The regulations specify that all theaters using digital  
22 projection must make captioning available for any movie distributed with captions. 28 C.F.R. §  
23 36.303(g)(2). Cinetopia's locations are all "movie theaters" within the meaning of the  
24 regulation, all employ digital projection, and are thus all subject to the requirements of the  
25 regulations.

26 30. Since not every movie is distributed with captions, the regulations require all  
27 digital theaters to specify, on a movie-by-movie basis, which movies have captions available.

1 28 C.F.R. § 36.303(g)(8). That notification is required in all advertisements, including  
2 websites, telephone recordings, and at the box office.

3 31. Cinetopia does not indicate on its general website or on the websites of any of  
4 its four multiplexes that any captioning is available even though all or virtually all of the  
5 movies shown at those multiplexes are distributed with captions.

6 32. Because of the notice requirement, potential patrons, including the named  
7 plaintiffs, members of the organizational plaintiffs, and other people similarly situated, are  
8 entitled to and do in fact assume that when websites or other advertisements fail to  
9 affirmatively indicate that captioning is available, then in fact there is no available captioning,  
10 and they are thereby deterred from patronizing those theaters.

11 33. By failing to provide caption-viewing equipment, and by failing to provide  
12 movie-by-movie notice that captioning is available, Cinetopia is violating the ADA and its  
13 implementing regulations, and plaintiffs are entitled to relief as set forth in this complaint.  
14

#### 15 CLASS ACTION ALLEGATIONS

16 34. Plaintiffs repeat the allegations of Paragraphs 1-33 of the complaint, and  
17 incorporate them herein.

18 35. Plaintiffs bring this action pursuant to Rule 23(b)(3), Federal Rules of Civil  
19 Procedure. Plaintiffs ask the Court to certify a class described as follows:

20 All individuals with hearing loss who require captioning to  
21 understand and fully enjoy movies, and who wish to attend a movie  
22 at one of Cinetopia's multiplexes but are either deterred from  
23 doing so by the absence of captioning or who do attend but cannot  
24 fully enjoy the event because they cannot fully understand the  
25 spoken and sung content of the presentation.

26 36. The requirements of Rule 23(b)(3) are met for the following reasons:

27 a. **Numerosity** – An individual's ability to comprehend speech depends on  
several variables, most notably the listening environment. A movie theater is a particularly



1 challenging environment for a number of reasons. The listener may not be able to use common  
 2 mechanisms of supplementing auditory information, such as speech-reading, and obviously  
 3 cannot use other coping mechanisms such as the ability to ask the speaker to repeat or re-  
 4 phrase. Context often helps people understand speech by enabling them to anticipate what will  
 5 be said, but the essence of drama or especially comedy comes from the unexpected moment  
 6 where the context changes, and it is that critical content that people with hearing loss most  
 7 frequently miss.

8 According to the federal Center for Disease Control, some 15% of adult Americans  
 9 report having some difficulty hearing. [http://www.cdc.gov/nchs/data/series/sr\\_10/sr10\\_260.pdf](http://www.cdc.gov/nchs/data/series/sr_10/sr10_260.pdf)  
 10 (see p.13). While no precise numbers can be given, suffice it to say that a significant proportion  
 11 of the actual and potential Cinetopia patrons cannot understand dialogue and lyrics through  
 12 hearing alone. Moreover, there is simply no way to identify those individuals because any  
 13 available information would be protected by medical privacy rules.

14 b. **Commonality and Typicality** – There are no questions of law or fact unique to  
 15 named individual or organizational plaintiffs. The undisputed fact is that Cinetopia does not  
 16 provide notice that captioning is available for any of its movies at any of its locations and is  
 17 likely not providing captioning of any sort either. Any available affirmative defenses apply  
 18 equally to named plaintiffs and to class members. Because plaintiffs seek only declaratory and  
 19 injunctive relief, and do not seek damages, there are no individual issues.

20 c. **Fair and adequate representation** – There is no conflict between the demands  
 21 of the individual and the organizational plaintiffs, nor between those plaintiffs and other  
 22 potential patrons who might want captioning, nor does this demand conflict with the interests  
 23 of patrons who want aids and services other than captioning.

24 Undersigned pro hac vice counsel has had considerable experience in actions of this  
 25 nature.. He represented (Wash-CAP) in *Washington State Communication Access Project v.*  
 26 *Regal Cinemas et al.*, 290 P.3d 413, 173 Wn. App. 174 (Wash.App. 2013) and represented  
 27 ALDA in California litigation against Cinemark and a settlement with AMC.



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